

HOUSE BILL NO. 94

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE HANNAN

Introduced: 3/13/19

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the taxation of electronic smoking products; and providing for an
2 effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 43.50.150(c) is amended to read:

5 (c) The department may enter into an agreement with a municipality that
6 imposes a tax on cigarettes, [OR OTHER] tobacco products, or electronic smoking
7 products for the purpose of jointly auditing a person liable for a tax under
8 AS 43.50.010 - 43.50.390 and the municipal tax on cigarettes, [OR OTHER] tobacco
9 products, or electronic smoking products. In this subsection, "electronic smoking
10 product" has the meaning given in AS 43.50.390.

11 * **Sec. 2.** AS 43.50.300 is amended to read:

12 **Sec. 43.50.300. Excise tax levied.** An excise tax is levied on tobacco products
13 and electronic smoking products in the state at the rate of 75 percent of the
14 wholesale price of the [TOBACCO] products. The tax is levied when a person

(1) brings, or causes to be brought, a tobacco product or electronic smoking product into the state from outside the state for sale;

(2) makes, manufactures, or fabricates a tobacco product or electronic smoking product in the state for sale in the state; or

(3) ships or transports a tobacco product or electronic smoking product to a retailer in the state for sale by the retailer.

* Sec. 3. AS 43.50.310(b) is amended to read:

(b) The tax does not apply to a

(1) tobacco product if the United States Constitution or other federal laws prohibit the levying of the tax on the product by the state; or

(2) an electronic smoking product

(A) that is subject to taxation under AS 43.61.010 - 43.61.030 and that does not contain nicotine;

(B) approved for sale by the United States Food and Drug Administration as a drug, drug product, including a drug product used to treat tobacco dependence, or combination product under 21 U.S.C. 301 - 392 (Federal Food, Drug, and Cosmetic Act);

(C) if the United States Constitution or other federal laws prohibit the levying of the tax on the product by the state.

* Sec. 4. AS 43.50.320(a) is amended to read:

(a) Except as provided in (g) of this section, a person must be licensed by the department if the person engages in business as a distributor for a tobacco product or electronic smoking product that is subject to the tax.

* Sec. 5. AS 43.50.330(a) is amended to read:

(a) On or before the last day of each calendar month, a licensee shall file a return with the department. The return must state the number or amount of tobacco products and electronic smoking products sold by the licensee during the preceding calendar month, the selling price of the tobacco products and electronic smoking products, and the amount of tax imposed on the tobacco products and electronic smoking products.

* Sec. 6. AS 43.50.335 is amended to read:

1 **Sec. 43.50.335. Tax credits and refunds.** The department shall adopt
 2 procedures for a refund or credit to a licensee of the tax paid for tobacco products or
 3 electronic smoking products that have become unfit for sale, are destroyed, or are
 4 returned to the manufacturer for credit or replacement if the licensee provides proof
 5 acceptable to the department that the tobacco products or electronic smoking
 6 products have not been and will not be consumed in this state.

7 * **Sec. 7.** AS 43.50.340 is amended to read:

8 **Sec. 43.50.340. Records.** A licensee shall keep a complete and accurate record
 9 of all tobacco products and electronic smoking products of the licensee subject to
 10 the tax, including purchase prices, sales prices, the names and addresses of the sellers
 11 and the purchasers, the dates of delivery, the quantities of tobacco products and
 12 electronic smoking products, and the trade names and brands. Statements and
 13 records required by this section must be in the form prescribed by the department,
 14 preserved for three years, and available for inspection upon demand by the
 15 department.

16 * **Sec. 8.** AS 43.50.390(1) is amended to read:

17 (1) "distributor" means a person who

18 (A) brings, or causes to be brought, a tobacco product or
 19 electronic smoking product into the state from outside the state for sale;

20 (B) makes, manufactures, or fabricates a tobacco product or
 21 electronic smoking product in the state for sale in the state; or

22 (C) ships or transports a tobacco product or electronic
 23 smoking product to a retailer in the state for sale by the retailer;

24 * **Sec. 9.** AS 43.50.390(5) is amended to read:

25 (5) "wholesale price" means

26 (A) the established price for which a manufacturer sells a
 27 tobacco product or electronic smoking product to a distributor after
 28 deduction of a discount or other reduction received by the distributor for
 29 quantity or cash if the manufacturer's established price is adequately supported
 30 by bona fide arm's length sales as determined by the department; or

31 (B) the price, as determined by the department, for which

1 tobacco products or electronic smoking products of comparable retail price
 2 are sold to distributors in the ordinary course of trade if the manufacturer's
 3 established price does not meet the standards of (A) of this paragraph.

4 * **Sec. 10.** AS 43.50.390 is amended by adding a new paragraph to read:

5 (6) "electronic smoking product" means a

6 (A) component, solution, vapor product, or other related
 7 product that is manufactured and sold for use in an electronic cigarette,
 8 electronic cigar, electronic cigarillo, electronic pipe, or other similar device for
 9 the purpose of delivering nicotine or other substances to the person inhaling;

10 (B) product under (A) of this paragraph that is sold as part of a
 11 disposable integrated unit containing a power source and delivery system or as
 12 a kit containing a refillable electronic smoking system and power source.

13 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
 14 read:

15 APPLICABILITY. (a) AS 43.50.300, as amended by sec. 2 of this Act, and
 16 AS 43.50.320(a), as amended by sec. 4 of this Act, apply to electronic smoking products sold
 17 on or after the effective date of secs. 2 and 4 of this Act.

18 (b) AS 43.50.330(a), as amended by sec. 5 of this Act, applies to the first monthly
 19 return submitted after the first full month after the effective date of sec. 5 of this Act.

20 * **Sec. 12.** This Act takes effect January 1, 2021.